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10/691,028

10/22/2003

James Russell Curtis

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EXAMINER

PHAM, THAI V

ART UNIT

PAPER NUMBER

2191

DATE MAILED: 10/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/691,028

Applicant(s)

CURTIS ET AL.

Examiner

Thai Van Pham

Art Unit

2191

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☒ Claim(s) 2 and 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/22/03</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is the initial office action based on the application filed on October 16, 2006.

Claims 1 – 10 are currently pending and have been considered below.

Title

1. The title is objected to because of the following informalities: containing a misspelled word "Priotizing".

Appropriate correction is required.

Specification

2. The disclosure is objected to because of the following informalities:

-- Paragraph [16] recites "*Internet 15*" which is not identified anywhere in Figure 1.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2 and 7 are rejected due to lack of antecedent bases for one or more limitations in the claim.

-- Claim 2: "*said list of updates*". For examination purpose, The Examiner is interpreting this limitation as "*a list of updates*".

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-- Claim 7: "*said prioritized list*". For examination purpose, The Examiner is interpreting this limitation as "*a prioritized list*".

-- Claim 8: "*said web interface*". For examination purpose, The Examiner is interpreting this limitation as "*web interface*".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 5, 6, 8, and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by **Cohen** (6,553,507).

-- Claim 1:

Cohen discloses *a method comprising:*

- *launching an application* (Fig. 2, page 2: lines 3 – 5; "...during execution of a software program...");
- *tracking usage of said application so as to generate usage data* (Fig. 1, page 2: lines 3 – 17; "fault detector" and "fault handler");
- *accessing an update site* (Fig. 1, page 2: lines 18 – 25; "...The server has a fault database...");
- *transferring said usage data to said update site* (Fig. 1, page 2: lines 16 – 31; "fault searcher");
- *prioritizing updates at least in part as a function of said usage data* (Fig. 1, page 2: lines 26 – 31; "...the fault is identified and found ...returns the corresponding solution...").

-- Claim 5.

Cohen discloses a *method as recited in claim 1,*

- *wherein further development of said application is directed in part as a function of said usage data (Page 2: lines 18 – 25; “...fault database configured to hold troubleshooting information including ...an identification of a software program, corresponding fault addresses identifying the faults, a solution in the form of a patch...”).*

-- Claim 6.

Cohen discloses a *software program set on computer readable media, said software program set comprising:*

- *a usage data evaluator for evaluating raw usage data received from a user computer system regarding a version of a software application installed thereon, said usage data evaluator providing evaluated usage data (Fig. 1, page 2: lines 3 – 31; “fault detector” and “fault handler”); and*
- *an update prioritizer for prioritizing updates available for said version at least in part as a function of said evaluated usage data (Fig. 1, page 2: lines 26 – 31; “...the fault is identified and found ...returns the corresponding solution...”).*

-- Claim 8.

Cohen discloses a *software program set as recited in claim 6,*

- *wherein said web interface presents said available updates in a list and specifies, for at least some of said updates, advantages over said version of said application (Fig. 3, page 2: lines 9 – 17; “an exemplary fault database”).*

-- Claim 9.

Cohen discloses *a software program set as recited in claim 6, further comprising:*

- *a usage-tracking module installed on said user computer system (Fig. 1, page 2: lines 3 – 17; “fault detector” and “fault handler”).*

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Cohen** (6,553,507).

-- Claim 10.

Cohen discloses *a software program set as recited in claim 9,*

Cohen, however, does not explicitly disclose that

- *said usage-tracking module is integrated with said version of said application.*

The fault detector (i.e., usage-tracking module) disclosed in **Cohen** is capable of monitoring different software applications being run on the operating system of a computing system (Fig. 3). The fault detector capable of handling a variety of concurrently executed. Thus, it is clear that the fault detector of **Cohen** can be individually integrated into an application so that when the application is executed, only the data usage of that application is monitored. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to integrate the usage-tracking of **Cohen** with a specific software application in order to exclusively monitor data usage of that application; thus, optimizing computing overhead and storage capacity as they are specifically utilized for the application under scrutiny.

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6. Claims 2 – 4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Cohen** (6,553,507) in view of **Meyer** (7,016,944).

-- Claims 2 and 3.

Cohen discloses a method as recited in claim 1,

Cohen, however, does not disclose that the method further comprising:

- *presenting said list of updates to a user.*
- *said user selects one or more of said updates for said application.*

Meyer discloses a method for updating a software application, comprising:

- *presenting a list of updates to a user* (Fig. 7, page 6: lines 60 – 64; “notification window”).
- *said user selects one or more of said updates for said application* (Fig. 5, page 6: lines 13 – 35; “...The user may request an update...”).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to enable the method of **Cohen** to present to a user a list of updates as disclosed in **Meyer** to inform him of upgrade availability as well as allow him to determine which of the available upgrades will downloaded.

-- Claim 4.

Cohen discloses a method as recited in claim 3,

Cohen, however, does not disclose that

- *said selected ones of said updates are installed so as to modify said application.*

Meyer discloses a method for updating a software application, comprising:

- said *selected ones of said updates are installed so as to modify said application* (Fig. 3, page 4: lines 51 – 57; “Installation Component”).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to enable the method of **Cohen** to install the selected updates as disclosed in **Meyer** to allow the updates to take effect on the application.

-- Claim 7.

Cohen discloses a *software program set as recited in claim 6*,

Cohen, however, does not disclose that the method further comprising:

- *a web interface for presenting said prioritized list to a user of said user computer system.*

Meyer discloses a method for updating a software application, comprising:

- *a web interface for presenting a prioritized list to a user of said user computer system* (Fig. 4, page 5: lines 8 – 12; “...(URL) that consists of a server and file path...”. Fig. 7, page 6: lines 60 – 64; “Notification Window”).

A web interface is a common, aggregate means by which people interact with a particular machine, device, computer program or other complex system. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the method of **Cohen** with a web interface for presenting the prioritized list to a user as disclosed in **Meyer** to conveniently inform him of upgrade availability as well as allow him to determine which of the available upgrades will be downloaded.

Conclusion

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

-- **Barritz** (US 2002/0026631), Method and System for Determining the Use and Non-Use of Software Programs. Isogon Corporation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thai Van Pham whose telephone number is (571) 270-1064. The examiner can normally be reached on Monday - Thursday, 9am - 5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Y. Zhen can be reached on (571) 272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TVP
10/16/2006



Wei Y. Zhen
Supervisory Patent Examiner